

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON

IN RE: JEFFREY SCOTT WEIRICH  
DEBORAH GRACE WEIRICH

Debtor(s)

: CASE NO: 17-32940

:

:Chapter 13

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: JUDGE: GUY R. HUMPHREY

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**CHAPTER 13 TRUSTEE'S OBJECTION TO NOTICE OF MORTGAGE PAYMENT  
CHANGE FILED BY CREDITOR FEDERAL NATIONAL MORTGAGE  
ASSOCIATION (DOC. 42)**

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Now comes the Chapter 13 Trustee and objects to Notice of Mortgage Payment Change filed by creditor Federal National Mortgage Association (Doc. 42) filed with Court on or about October 18, 2018. In support of his motion, the Trustee states as follows:

The herein case filed on September 18, 2017 and was confirmed on March 8, 2018. The Creditor filed its proof of claim on January 22, 2018 (Court claim #12, Trustee claims #1, 2, 53). This is the first Notice of Mortgage Payment Change (NMPC) filed to date.

The Creditor asserted a pre-petition arrears claim in the total amount of \$31,252.34. Of that amount, \$11,324.27 is claimed as an escrow deficiency for funds advanced and \$7,632.23 is claimed as an escrow shortage (for an aggregate of \$18,956.50). An objection (Doc. 28) to the escrow shortage component of this aggregate was filed by the Debtors on January 30, 2018. Pursuant to an agreed order on this objection (Doc. 40) filed August 28, 2018, the escrow shortage component of the arrears claim was reduced to \$1,852.19 for an aggregate total of \$13,176.46.

The NMPC filed by Creditor increases the Debtors' escrow payment from \$604.62 to \$1,073.92 per month. Of that \$1,073.92 proposed escrow payment, \$585.37 is for a monthly shortage payment designed to repay an "escrow shortage" of \$7024.39 over 12 months.

The Trustee's review of the NMPC indicates that Creditor did not credit the escrow analysis for amounts to be repaid to escrow via the proof of claim escrow arrears portion aggregate \$13,176.46. Furthermore, the escrow analysis history only credits an estimated \$488.55 for the November 2018 mortgage disbursement; however, the Trustee has actually paid \$13,278.29 to the Creditor to date toward the ongoing monthly mortgage payments. There is no credit on the escrow analysis for any actual payments disbursed by the Trustee for the analysis period of October 2017 through October 2018.

Creditor's failure to properly credit the current escrow analysis for amounts to be repaid to escrow via the proof of claim escrow portion aggregate \$13,176.46 creates a doubling of that claim recovery. Simply stated, the Creditor is attempting to recover the escrow shortage and deficiency twice by virtue of listing the deficiency in the proof of claim, as well as accounting for the deficiency in the NMPC.

Creditor should not be permitted to collect funds to which it is not entitled. If Creditor did collect those funds, an escrow overage would eventually result, running counter to sound fiscal practice and drawing funds that may otherwise be available to other Creditors.

WHEREFORE, the Chapter 13 Trustee moves the Court for an Order disallowing the proposed escrow shortage in the amount of \$585.37, setting the monthly mortgage payment at \$1,505.98, ordering the Creditor to adjust its records to reflect the reduction and order Creditor to rerun an escrow analysis consistent with the objection herein.

Respectfully submitted,

/S/ Jeffrey M. Kellner

JEFFREY M. KELLNER 0022205  
CHAPTER 13 TRUSTEE  
131 N. Ludlow St., Suite 900  
Dayton, OH 45402  
(937) 222-7600 Fax: (937) 222-7383  
email: [chapter13@dayton13.com](mailto:chapter13@dayton13.com)

17-32940

**NOTICE OF CHAPTER 13 TRUSTEE'S OBJECTION TO NOTICE OF MORTGAGE  
PAYMENT CHANGE FILED BY CREDITOR FEDERAL NATIONAL MORTGAGE  
ASSOCIATION (DOC. 42)**

Jeffrey M. Kellner, Chapter 13 Trustee, has filed papers with the Court objecting to Creditor's notice of mortgage payment change.

**Your rights may be affected.** You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. If you do not have an attorney, you may wish to consult one.

If you do not want the court to grant the relief sought in the motion or objection, then on or before **thirty (30) days from the date set forth in the certificate of service for the objection**, you must file with the Court a response explaining your position by mailing your response by ordinary U.S. Mail to the U.S. Bankruptcy Court, Southern District of Ohio, 120 W. Third St., Dayton, Ohio 45402

OR your attorney must file a response using the court's ECF System.

The court must **receive** your response on or before the above date.

You must also send a copy of your response either by 1) the court's ECF system or by 2) regular U.S. Mail to:

Jeffrey Scott & Deborah Grace Weirich, 780 Eagledale Cir., Kettering, Ohio 45429

Richard E. West, 195 E. Central Ave., Springboro, Ohio 45066

Jeffrey M. Kellner, Chapter 13 Trustee, 131 N. Ludlow St., Dayton, Ohio 45402

Office of the U.S. Trustee, 170 North High St., Suite 200, Columbus, Oh 43215

If you or your attorney do not takes these steps, the court may decide that you do not oppose the relief sought in the motion and may enter an order granting that relief without further hearing or notice.

17-32940

### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing **CHAPTER 13 TRUSTEE'S OBJECTION TO NOTICE OF MORTGAGE PAYMENT CHANGE FILED BY CREDITOR FEDERAL NATIONAL MORTGAGE ASSOCIATION (DOC. 42)** was served **electronically** on the date of filing through the Court's ECF System on all ECF participants registered with the court and by **ordinary U.S. Mail** on October 23, 2018 addressed to:

Jeffrey Scott & Deborah Grace Weirich  
780 Eagledale Cir.  
Kettering, Ohio 45429

Federal National Mortgage Association (1n3)  
c/o Seterus Inc.  
P.O. Box 1047  
Hartford, Connecticut 06143

Richard J. LaCivita (1n4)  
Reimer Law Co.  
30455 Solon Road  
Solon, Ohio 44139

Ascension Capital Group, Inc. (45)  
Exeter Finance Corp. Department  
P.O. Box 165028  
Irving, Texas 75016

Synchrony Bank (46)  
PRA Receivables Management  
P.O. Box 41021  
Norfolk, Virginia 23541

Cynthia A. Jeffrey (47)  
Reimer Law Co.  
30455 Solon Road  
Solon, Ohio 44139

Stephen D. Miles (48)  
18 W. Monument Ave.  
Dayton, Ohio 45402

Cassandra Andres Rice (50)  
Gottschlich & Portune, LLP  
201 East Sixth St.  
Dayton, Ohio 45402

U.S. Attorney (54)  
602 Federal Building  
200 W. Second Street  
Dayton, Ohio 45402

Jeff Sessions (55)  
U.S. Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530

Timothy J. Mayopoulos, CEO (56)  
Fannie Mae  
3900 Wisconsin Ave.  
Washington, D.C. 20016

Jeffrey M. Kellner, Trustee By /S/ Jeffrey M. Kellner

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**Certified Mail Certificate of Service**

17-32940

I hereby certify that a copy of the attached was served by electronic service or was mailed by certified mail to each of the following on the date of the electronic filing.

U.S. ATTORNEY  
602 FEDERAL BUILDING  
200 W. SECOND STREET  
DAYTON, OHIO 45402

By Certified Mail Number: (Chapter 13 Use Only)

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JEFFREY M. KELLNER By /s/ JEFFREY M. KELLNER

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**Certified Mail Certificate of Service**

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I hereby certify that a copy of the attached was served by electronic service or was mailed by certified mail to each of the following on the date of the electronic filing.

JEFF SESSIONS, U.S. ATTORNEY GENERAL  
U.S. DEPARTMENT OF JUSTICE  
950 PENNSYLVANIA AVENUE, N.W.  
WASHINGTON, D.C. 20530

By Certified Mail Number: (Chapter 13 Use Only)

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JEFFREY M. KELLNER By /s/ JEFFREY M. KELLNER

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**Certified Mail Certificate of Service**

17-32940

I hereby certify that a copy of the attached was served by electronic service or was mailed by certified mail to each of the following on the date of the electronic filing.

TIMOTHY J. MAYOPOULOS, PRES/CEO  
FEDERAL NATIONAL MORTGAGE ASSOCIATION  
3900 WISCONSIN AVE., N.W.  
WASHINGTON, D.C. 20016

By Certified Mail Number: (Chapter 13 Use Only)

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JEFFREY M. KELLNER By /s/ JEFFREY M. KELLNER

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